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In re Application of:

ZHOU, HENRY HAIFENG

Serial No.: 10/064,422

Filed: Jul. 11, 2002

Docket: NONE

Title: RESPIRATORY APPLIANCES FOR
PEDIATRIC INHALATION INDUCTION

DECISION ON PETITION TO
WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed on Jan. 23, 2007 to withdraw the holding of abandonment of Oct. 31, 2006. The petition is being considered pursuant to 37 CFR 1.181 and no fee is required for the petition.

The petition is **DISMISSED AS UNTIMELY**.

In the petition, the applicant requested withdrawal of the holding of abandonment on Oct. 31, 2006 because applicant believed that he had already complied with a previous non-compliant letter issued by the examiner.

The record shows that:

1. In response to the non-final Office action dated Mar. 9, 2004, on May 13, 2004, the applicant filed an amendment to the claims.
2. On Jun. 7, 2005, the Office issued a notice non-compliant amendment letter under 37 CFR 1.121 because the amendments to the claims on May 13, 2004 failed to include a complete listing of all of the claims, each claim was not provided with the proper status identifier, and the claims were not listed on a separate page.
3. On Jul. 1, 2005, the applicant filed an amendment to the claims.
4. On Jan. 30, 2005, the Office issued a second notice of non-compliant amendment letter under 37 CFR 1.121 because the amendment to the claims on Jul. 1, 2005 did not include a complete listing of all of the claims, the claims were not presented in ascending numerical order and claim 3 was missing.
5. On Mar. 21, 2006 a telephone interview was conducted between the applicant and the examiner. The examiner notified applicant that the amendment filed Jul. 1, 2005 was still non-compliant.
6. On Mar. 29, 2006, the applicant filed an amendment to the claims.

7. On Apr. 18, 2006, the Office issued a third notice of non-compliant amendment letter under 37 CFR 1.121 because the amendments to the claims on Mar. 29, 2005 did not include a complete listing of all of the claims, the claims were not presented in ascending numerical order, claim 1 should be listed as "Currently Amended", any additions made to the text of the claims should be underlined, any deleted text should be denoted with strikethrough, claim 2 should be listed as "Canceled" and no text should be listed for canceled claims, claim 3 was missing, but should be listed as "Currently Amended" and as with claim 1, any changes should be highlighted with underlining or strikethrough and that claim 4 should be listed as "Canceled".
8. On Oct. 31, 2006, the examiner issued a notice of abandonment for applicant's failure to properly reply to the third notice of non-compliant amendment mailed on Apr. 18, 2006.
9. On Jan. 23, 2007, the applicant filed the current request for withdrawal of the holding of abandonment on Oct. 31, 2006.

Discussion and Analysis

37 CFR 1.181(f) states:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

37 CFR 1.136(a) states:

(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

- (i) Applicant is notified otherwise in an Office action;
- (ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;
- (iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;
- (iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or
- (iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or
- (iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or
- (v) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

A review of the record shows that the application went abandoned for failing to reply to the notice of non-compliant amendment mailed on Apr. 18, 2006. Furthermore, the petition is untimely as a review of the record shows that the instant petition was filed more than two months after the notice of abandonment letter mailed Oct. 31, 2006. Pursuant to 37 CFR 1.181(f), the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the relief requested will not be granted.

In order to revive this application from abandonment, applicant is advised to file petition to revive the application under 37 CFR 1.137. Applicant is directed to the Inventor Resources website located at: <http://www.uspto.gov/web/offices/com/iip/index.htm> or the Inventor's Assistance Center at <http://www.uspto.gov/web/offices/pac/dapp/pacmain.html> for assistance. Applicant may also call: 1-800-786-9199 or 571-272-1000 to contact the Inventor's Assistance Center.

Conclusion

For the foregoing reasons, the relief requested by petitioners will not be granted. Specifically, the examiner's notice of abandonment dated Oct. 31, 2006 is proper. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Alternatively, petitioners may wish to consider filing a petition to revive the application under 37 CFR 1.137. The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov. The application is being forwarded to Examiner Patel of Art Unit 3772 for further processing. Any inquiry regarding this decision should be directed to Marc Jimenez, Training Quality Assurance Specialist, at (571) 272-4530.

The petition is DISMISSED AS UNTIMELY.



Frederick R. Schmidt, Director
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